IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3471 of 2007 (O&M)

Date of Decision: 18.10.2007

Smt.Savitri Devi & Ors. ...Appellants

Vs.

Baljeet Singh & Anr. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Rajesh Lamba, Advocate,
for the appellants.

Vinod K.Sharma, J. (Oral)

This regular second appeal has been filed against the judgment and decree passed by the learned lower appellate court vide which decree passed by the learned trial court was ordered to be set aside and the suit filed by the plaintiff-respondents was ordered to be decreed.

The plaintiffs had brought a suit to challenge the judgment and decree dated 12.9.2005 passed by the Court of Shri Kuldeep Singh in

Civil Suit No.289 of 1996 titled Baljeet Singh etc. Vs. Ram Pal. The plaintiffs claimed that they were owners of agricultural land by virtue of sale deed dated 19.7.1995. The said sale deed was executed by Ram Phal and actual physical possession of the land was said to be with Om Parkash, Ram Kumar, Bakwan Singh and Dilbag Singh sons of Khetu Ram as mortgagees. It was the case that the collusive decree was suffered by defendant No.1 in collusion with defendants No.2 to 6. It was challenged primarily on the plea that in the suit filed by the appellant-defendants, Ram Phal was restrained from alienating the property except for legal necessity. It was also the case of the appellants that there was an injunction against the transfer of land and in violation of the said injunction the property was sold. However, the sale deed dated 19.7.1995 which was prior in time to the decree in favour of the defendant-appellants was not challenged. Learned lower appellate court therefore, came to the conclusion that the plea of the defendant-appellants that the property was ancestral was also not correct for want of pleadings in the written statement.

Learned lower appellate court on appreciation of evidence came to the conclusion that the plaintiffs were to be declared as owners of the property on the basis of the sale deed dated 19.7.1995. Consequently, the judgment dated 5.8.1995 passed in favour of defendants No.2 to 5 and mutation sanctioned in their favour was declared illegal null and void and have no binding effect on the rights of the plaintiff-appellants.

Learned counsel for the appellants have challenged the

judgment and decree passed by the learned lower appellate court on the plea that in view of the injunction order it was not open to Ram Phal to have executed the sale deed in which Baljeet was also a party. However, this plea cannot be accepted as the said suit already stands dismissed as withdrawn and therefore, the said injunction order stands merged in the final order of the dismissal of the suit.

The other plea that in other suit Ram Phal having conceded to the claim of the appellants the sale deed executed in favour of Baljeet etc. could bind the plaintiff-respondent it was hit by lis pendens and plaintiff was aware of the pendency of the appeal. The plaintiff had, in fact, moved an application to be impleaded as a party and the said application was dismissed. The plea raised does not help the appellant, as dismissal of application moved by the plaintiff-respondent would only lead to a conclusion that he was neither necessary nor proper party in the said suit. He cannot, therefore, be bound by the said judgment and decree and his claim, therefore, was required to be decided independently, which has been done.

In view of above, there is no merit in this appeal nor any question of law much less substantial question of law arises for consideration of this court.

Dismissed.

(Vinod K.Sharma)
18.10.2007 Judge

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